

REMARKS

After amendment and cancellation, claims 1, 5, 8-10, 14, 17-19, 23, 25-26, 29-32, 35-38, 41-44, and 47-51 are now pending in the application. Claims 1, 8, 10, 17, 19, 29-30, 32, 35-36, 38, 41-44, and 47-51 have been amended. Claims 6-7, 15-16, 22, and 24 have been cancelled.

In the present Office Action, claims 1, 10, 19, 26, 29-32, 35-38, and 41-44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohn, May 1976, in view of Lovell, 1981, and in further view of Dickerson, U.S. Patent Application Publication No. 2004/0254879 A1 (hereafter "Dickerson"). Claims 5, 14, and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohn, in view of Lovell, 1981, in further view of Dickerson, and in further view of Sloane, 1978. Claims 8, 9, 17, 18, and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohn, in view of Lovell, 1981, in further view of Dickerson, in further view of Sloane, and in further view of Kelly et al., U.S. Patent Application Publication No. 2001/0056397 A1 (hereafter "Kelly"). Claims 47-51 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohn, in view of Lovell.

Insofar as these grounds for rejection apply to the present claims, the Applicant respectfully traverses. Reconsideration of the previously rejected claims and favorable action is requested in light of the above amendments and the following remarks.

Cohn/Lovell/Dickerson does not render the amended claims obvious

Claims 1, 10, 19, 26, 29-32, 35-38, and 41-44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohn in view of Lovell and in further view of Dickerson. Claims 47-51 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohn, in view of Lovell.

The USPTO has issued examination guidelines for determining obviousness under 35 U.S.C. § 103 in view of the Supreme Court opinion *KSR International Co. v. Teleflex Inc.* First an examiner must complete the basic factual inquiries of *Graham v. John Deere Co.* Next, a variety of rationales are provided in 72 Fed. Reg. 57526 (dated October 10, 2007) to determine whether the claimed invention would have been obvious to one of ordinary skill in the art. Applicant respectfully submits that these criteria have not been met for Cohn in view of Lovell and in further view of Dickerson as applied to amended claims 1, 5, 8-10, 14, 17-19, 23, 25-26, 29-32, 35-38, 41-44, and 47-51 of the present invention.

For example, amended claims 1, 10, 19, and 47 of the present invention recite, in part, a growth rate of less than two percent and a loan term of thirty or more years. Applicant respectfully submits that Cohn, Lovell, and the prior art described in Dickerson fail to teach or suggest the concept of a lending instrument with these features.

Cohn discloses a graduated payment mortgage but does not teach or suggest a gradually stepped payment loan limited to a growth rate of less than 2% and further limited to a loan term of 30 years or more. Cohn goes on to explain that the graduated payment design is undesirable for lenders. The lending instrument of claim 1, however, includes features that result in benefits such as low default risk and near term savings and/or additional purchasing power for borrowers. This low default risk is highly desirable for lenders.

Similarly, Lovell does not disclose, teach, or suggest a lending instrument wherein the growth rate is less than two percent and the loan term is of thirty or more years. Lovell discloses a method for determining present value and discloses an indexed mortgage but does not teach or suggest a gradually stepped payment loan limited to a growth rate of less than 2% and further limited to a loan term of 30 years or more.

These elements are not obvious from Cohn, Lovell, and/or the prior art described in Dickerson. Graduated payment mortgages (GPMs) were designed for high interest rate environments and have thus fallen out of favor in lower interest rate environments. However, gradually stepped payment mortgages with growth rates less than 2% and terms of 30 years or more are particularly well suited to low interest rate environments. The absence of usage of this unique loan instrument, despite great potential benefits to borrowers and lenders, demonstrates its non-obviousness.

Thus Cohn/Lovell/Dickerson does not teach or suggest all the elements of claims 1, 10, 19, or 47. Claims 5, 8-9, 14, 17-18, 23, 25-26, 29-32, 35-38, 41-44, and 48-51 depend from claim 1, 10, 19, or 47. Thus, the Applicant respectfully submits that claims 1, 5, 8-10, 14, 17-19, 23, 25-26, 29-32, 35-38, 41-44, and 47-51 as amended are allowable over the cited references.

Furthermore, Cohn does not disclose a stream of payments comprising "constant payments equal to the initial payment for a prespecified period of time; and subsequent payments comprising the initial payment adjusted one or more times by the growth rate at prespecified

intervals during the loan term, wherein the prespecified period of constant payments is longer than the period between any two payments adjusted by the growth rate and is longer than one year” as recited in claims 29, 35, 41, and 48 as amended. Cohn discloses a mortgage with graduated payments over the entire term of the loan. Cohn, page 409, Equation 3. Cohn does not teach or suggest the concept of a loan with an initial period of flat payments followed by a period of graduated payments. Lovell and Dickerson do not teach or suggest this concept either.

Again, due to the risk to lenders already inherent in Cohn’s GPM, it is not obvious to include this initial period of constant payments equal to the initial payment rather than increasing borrower payments as soon as possible. However, claims 29, 35, 41, and 48 as amended provide features that create benefits for borrowers and lenders that are not obvious and thus have not been implemented by lenders.

Thus Cohn/Lovell/Dickerson does not teach or suggest all the elements of amended claims 29, 35, 41, and 48. Claims 30-32, 36-38, 42-44, and 49-51 depend from claim 29, 35, 41, or 48. Thus, the Applicant again respectfully submits that claims 29-32, 35-38, 41-44, and 48-51, are allowable over the cited references.

As a final example, Lovell does not disclose “one or more prespecified secondary adjustments to the growth rate” as recited in amended claims 30, 36, 42, and 49. Lovell discloses an indexed mortgage in which payments increase in proportion to the price level, which reflects inflation rates, and thus the growth rate would change unless inflation is constant. Lovell, page 289. The growth rate of the indexed mortgage of Lovell fluctuates with inflation and is not predictable at the outset of the loan term. However, the “prespecified secondary adjustments” of claims 30, 36, 42, and 49 allow the borrower to plan in advance for changing payment amounts. Thus for this additional reason, Cohn/Lovell/Dickerson does not teach or suggest all the elements of amended claims 30, 36, 42, and 49. Claims 31-32, 37-38, 43-44, and 50-51 depend from claim 30, 36, 42, or 49. Therefore, the Applicant again respectfully submits that claims 30-32, 36-38, 42-44, and 49-51, are allowable over the cited references.

Double Patenting

Claims 1, 5, 8-10, 14, 17-19, 23, 25-26, 29-32, 35-38, 41-44, and 47-51 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting. More specifically, these claims are rejected as being unpatentable over claims 1-28 of co-pending U.S. Application No. 10/402,244. As the claims of the present application have been amended and clarification provided in the foregoing remarks, it is submitted that the double patenting rejection has been obviated. Reconsideration and removal of these grounds for provisional rejection of the claims is thus respectfully requested.

In the event that the double patenting rejection is continued by the Examiner, it is noted that applications above are still pending, making this rejection a "provisional" rejection. At this time, therefore, Applicant is not required to file a terminal disclaimer. Applicant therefore requests that the Examiner hold this rejection in abeyance and proceed with substantive examination of the Application based upon the prior art. In the event that all prior art rejections are overcome, a Notice of Allowance should be immediately issued.

CONCLUSION

In view of the foregoing, the Applicant respectfully requests that the Examiner enter the above-noted amendments before the application is examined upon the merits, and that the above remarks be fully considered in conjunction therewith. Timely allowance of all currently pending claims and the issuance of a Notice of Allowance are requested.

The Applicant has filed this Response and Amendment without increasing the number of claims above the number previously submitted or paid for. Accordingly, no additional claims fees are believed to be due at the present time. If such fees or any other fees associated with the filing of this paper are due at this time, please charge the fees to our Deposit Account No. 50-1349. Also, please credit any overpayments to Deposit Account No. 50-1349.


The Examiner is invited to contact the Applicant's undersigned representative via telephone if such would expedite prosecution of this application toward allowance.

Respectfully submitted,

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HOGAN & HARTSON LLP
555 13th Street, N.W.
Washington, D.C. 20004
Telephone: 202-637-5600
Facsimile: 202-637-5910

By: _____


Celine Jimenez Crowson
Registration No. 40,357

Customer No. 24633